



MAR 02 2016

Dr. Roger N. Casey
President
McDaniel College
2 College Hill
Westminster, MD 21157-4390

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Dear Dr. Casey:

This letter is to inform you that the U.S. Department of Education (Department) intends to fine McDaniel College (McDaniel) a total of \$45,000 based on the violations of statutory and regulatory requirements outlined below. This fine action is taken in accordance with the procedures that the Secretary of Education (Secretary) has established for assessing fines against institutions participating in any of the programs authorized under Title IV of the Higher Education Act of 1965, as amended, 20 U.S.C. § 1070 *et seq.* (Title IV, HEA programs). As applicable here, under the Department's regulations, the Department may impose a fine of up to \$35,000 for each violation. 34 C.F.R. § 668.84. As detailed below, this fine action is based on McDaniel's failure to comply with the requirements of the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (the Clery Act) in Section 485(f) of the HEA, 20 U.S.C. § 1092(f), as reflected in 34 C.F.R. §§ 668.41 and 668.46, and the Drug-Free Schools and Communities Act Amendments of 1989 (DFSCA) as reflected in 34 C.F.R. Part 86.

Under the Clery Act, institutions participating in the Title IV, HEA programs must prepare, publish and distribute an Annual Security Report (ASR) by October 1 of each year. 34 C.F.R. § 668.41(e). The ASR must include a description of the institution's campus security policies in specific areas. 34 C.F.R. § 668.46(b). A complete ASR must include all the policy statements listed in 34 C.F.R. § 668.46(b). In addition, the ASR must report statistics for the three most recent calendar years concerning the occurrence of certain crimes on campus, in or on certain non-campus buildings or property, and on public property. 34 C.F.R. § 668.46(c). An institution must compile and publish crime statistics for each separate campus. 34 C.F.R. § 668.46(d). The crimes that must be reported include: criminal homicide (murder and manslaughter); sex offenses (forcible and non-forcible); robbery; aggravated assault; burglary; motor vehicle theft; arson; and arrests for liquor law violations, drug law violations and illegal weapons possession. The ASR must be distributed to current students and employees and must be made available to applicants for admission and employment to provide them with accurate, complete and timely information about crime and safety on campus. 34 C.F.R. § 668.41(e). Institutions must submit the crime statistics annually to the Department, which makes them publicly available. 34 C.F.R. § 668.41(e)(5).

Federal Student Aid
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Administrative Actions and Appeals Service Group
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The DFSCA and the Department's regulations require an institution of higher education to adopt and implement a drug prevention program for its students. 34 C.F.R. § 86.100.

The Department conducted a program review at McDaniel from February 5, to February 7, 2014. The review included a general assessment of McDaniel's compliance with the statutes and regulations governing the institution's administration of the Title IV programs. The reviewers also examined McDaniel's compliance with the Clery Act, specifically the accuracy and completeness of campus crime statistics and policy disclosures published in its 2013 ASR, and its compliance with the DFSCA and its implementing regulations.

On July 23, 2014, the Department issued a Program Review Report (PRR) to McDaniel. The review found that McDaniel had not complied with the Clery Act, the DFSCA and the Department's implementing regulations. McDaniel responded to the report on October 23, 2014. After reviewing McDaniel's responses, the Department issued its Final Program Review Determination (FPRD) letter to McDaniel on August 25, 2015. The FPRD is incorporated by reference into this fine action. (Enclosure 1).

The Department is taking this fine action based on the findings in the FPRD relating to McDaniel's compliance with the Clery Act and the DFSCA which concluded that McDaniel failed to prepare, publish and distribute a complete 2013 ASR; and failed to comply with the drug and alcohol abuse prevention regulations in 34 C.F.R. Part 86.

MCDANIEL FAILED TO PROPERLY COMPILE AND DISCLOSE ACCURATE CRIME STATISTICS

Under the Clery Act and the Department's regulations, institutions participating in the Title IV, HEA programs must make available statistical information related to certain reported crimes and arrest and campus disciplinary referrals for alcohol, drug and illegal weapons possession violations. The statistical information must be disclosed by location – on campus (dormitories vs. residential facilities), in or on non-campus buildings or property, and on public property – and must be provided for the three most recent calendar years. 34 C.F.R §§ 668.46(a), 668.46(c)(1) – (c)(4).

The statistics must be included in the institution's ASR which must be available to students, employees and potential students and employees by October 1 of each year, and it must be electronically submitted to the Department for inclusion in the Campus Crime and Security Website. The Department has established timeframes within which institutions must electronically submit information. 34 C.F.R § 668.41(e)(1)-(e)(5). The statistics included in the ASR and submitted to the Department should be identical.

The crime statistics included in McDaniel's 2013 ASR did not match the data submitted to the Department's Campus Safety and Security Data Analysis Cutting Tool (CSSDACT).

Specifically, reviewers determined that:

1. McDaniel properly disclosed three (3) incidents of burglary that occurred on campus in calendar year 2010 in its 2013 ASR but reported only two (2) burglaries in the statistics submitted to the Department.
2. McDaniel reported that one (1) liquor law violation occurred on public property in calendar year 2012 in its 2013 ASR and reported zero (0) liquor law violations on public property in the statistics submitted to the Department.

McDaniel's response acknowledged the violations; and claimed that the violations were caused by administrative errors and noted that the College took the appropriate corrective action after the PRR was issued.

The Clery Act and the Department's regulations require that institutions ensure the accuracy of the data when it is presented to students and employees who can use the data to make decisions affecting their personal safety. Students and employees must be able to rely on the institution's reported statistics. McDaniel's correction of the crime statistics only after the Department alerted the College of its obligations does not excuse its earlier failure to comply with its legal obligations. The correction of the violations does not diminish the seriousness of not properly and correctly reporting crime incidents at the time they occurred.

MCDANIEL DID NOT COMPLY WITH THE DRUG AND ALCOHOL ABUSE PREVENTION REQUIREMENTS

The DFSCA and the Department's regulations require each institution of higher education participating in the Title IV, HEA programs to adopt and implement a drug prevention program for its students and employees that, at a minimum, includes the annual distribution in writing to each employee, and to each student who is taking one or more classes for any type of academic credit (except continuing education units) standards of conduct that: clearly prohibit, at a minimum, the unlawful possession, use, or distribution of illicit drugs and alcohol by students and employees on its property or as part of any of its activities; describe the applicable legal sanctions under local, State, or Federal law for the unlawful possession or distribution of illicit drugs and alcohol; describe the health risks associated with the use of illicit drugs and the abuse of alcohol; describe any drug or alcohol counseling, treatment, or rehabilitation or re-entry programs that are available to employees or students; and include a clear statement that the institution will impose disciplinary sanctions on students and employees (consistent with local, State, and Federal law), and a description of those sanctions for violation of the standards of conduct. In addition, an institution must conduct a biennial review of its program to determine its effectiveness and implement changes to the program if they are needed and ensure that the disciplinary sanctions mentioned above are consistently enforced. 34 C.F.R. § 86.100.

The Department found that McDaniel failed to comply with the DFSCA and 34 C.F.R. Part 86. Specifically, McDaniel failed to distribute a complete drug and alcohol abuse prevention program (DAAPP) disclosure to all employees and students enrolled for academic credit on an annual basis. In particular, McDaniel's DAAPP only included the policies and procedures for students; it did not include applicable policies and procedures for employees as required by the DFSCA and 34 C.F.R. §86.100. In addition, McDaniel failed to conduct a biennial review of the DAAPP's effectiveness.

In its response to the PRR, McDaniel acknowledged that it did not distribute a complete DAAPP disclosure to its students and employees. McDaniel also conceded that it did not conduct the required biennial review of the DAAPP.

In determining the amount of a fine, the Department considers both the gravity of the offense and the size of the institution. 34 C.F.R. § 668.92. Pursuant to the Secretary's decision In the Matter of Bnai Arugath Habosem, Docket No. 92-131-ST (August 24, 1993), the size of an institution is based on whether it is above or below the median funding levels for the Title IV, HEA programs in which it participates. The latest year for which complete funding data is available for McDaniel is the 2013-2014 award year. According to the Department records, McDaniel received approximately \$2,407,949 in Federal Pell Grant (Pell) funds, \$11,854,824 in Federal Direct Loan funds and \$992,716 in Campus-Based funds. The latest information available to the Department indicates that the median funding level for institutions participating in the Federal Pell Grant program is \$1,571,915, for institutions participating in the Federal Direct Loan programs, the median funding level is \$2,408,978, and for institutions participating in the Campus-Based programs, the median funding level is \$266,597. Accordingly, McDaniel is a large institution because its funding levels for Federal Direct Loan, Federal Pell Grant, and Campus-Based funds are above the median funding levels for those Title IV, HEA programs.

As detailed in this letter, McDaniel's violations of the Clery Act, the DFSCA and the implementing regulations are very serious. McDaniel's students and their families and the institution's employees must be able to rely on the disclosures of campus crime statistics, policies and statements to understand the extent of crime on campus and the institution's security policies. Congress enacted the DFSCA to ensure that students and employees had vital information about the drug and alcohol prevention program at their institution. Moreover, a DAAPP that has not been tested in a biennial review is unlikely to be reliable and effective. McDaniel's employees were not given information about the standards and code of conduct expected of them with regard to drugs and alcohol use, and the sanctions that could be imposed if the code of conduct is violated. Moreover, the Department considers an institution's compliance with the Clery Act, and the DFSCA requirements to be part of its administrative capability, and McDaniel's failure to comply with those requirements constitutes an inability to properly administer the Title IV programs.

After considering the gravity of the violations and size of the institution, I have assessed a fine of \$10,000 for McDaniel's failure to publish and distribute an accurate 2013 ASR that contained

the same statistical data submitted to the Department. This is a serious violation. The inconsistent crime statistics in McDaniel's 2013 ASR and the statistics it submitted to the Department means that students and their families, employees and the public did not receive the same accurate information that they should receive under the law. Current and prospective students and employees must be given information that is complete and accurate to enable them make important safety decisions. A fine of \$10,000 is appropriate in this case.

I have assessed a fine of \$35,000 for McDaniel's failure to distribute a complete DAAPP to its students and employees, and its failure to conduct a biennial review to evaluate the effectiveness of its DAAPP and to assess the consistency of sanctions imposed for violations of its disciplinary standards and codes of conduct related to drugs and alcohol. This is a serious violation because students and employees cannot be expected to benefit from a DAAPP that is not complete and accurate. Moreover, the failure to conduct a biennial review may have resulted in a DAAPP that was not helpful to McDaniel's students and employees.

The fine of \$45,000 will be imposed on **March 26, 2016**, unless I receive, by that date, a request for a hearing or written material indicating why the fine should not be imposed. McDaniel may submit both a written request for a hearing and written material indicating why a fine should not be imposed. If McDaniel chooses to request a hearing or submit written material, you must write to me at:

Administrative Actions and Appeals Service Group
U.S. Department of Education
Federal Student Aid/Program Compliance
830 First Street, NE – UCP-3, Room 84F2
Washington, DC 20002-8019

If McDaniel requests a hearing, the case will be referred to the Office of Hearings and Appeals, which is a separate entity within the Department. That office will arrange for assignment of McDaniel's case to a hearing official who will conduct an independent hearing. McDaniel is entitled to be represented by counsel during the proceedings. If McDaniel does not request a hearing but submits written material instead, I will consider that material and notify McDaniel of the amount of fine, if any, that will be imposed.

ANY REQUEST FOR A HEARING OR WRITTEN MATERIAL THAT MCDANIEL SUBMITS MUST BE RECEIVED BY MARCH 26, 2016; OTHERWISE, THE \$45,000 FINE WILL BE EFFECTIVE ON THAT DATE.

Dr. Roger N. Casey
McDaniel College
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If you have any questions or desire any additional explanation of McDaniel's rights with respect to this action, please contact Lawrence Mwethuku of my staff at 202/377-3684.

Sincerely,



Susan D. Crim, Director
Administrative Actions and Appeals Service Group
Federal Student Aid/Program Compliance
U.S. Department of Education

Enclosure

cc: Dr. Elizabeth H. Sibolski, President, MSCHE, via info@msche.org
Dr. J. Hunter-Cevera, MD Acting Sec. of Higher ED, via
jennie.hunter-cevera@maryland.gov